IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 3 OF 2005.
IN
CIVIL APPLICATION NO. 821 OF 2003
IN
SECOND APPEAL NO. 536 OF 2003

Sudhakar Sambhaji Kadam & anr. ... Appellants.
Versus.
Dattatray Vinayak Dhumal & anr. ... Respondents.

Shri G.S.Godbole for the Appellants.

Shri A.S.Pratinidhi holding for Shri Arvind Purohit for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 28th July, 2006.

P.C.:

1. The submissions of the learned Advocates appearing for the parties were heard on the last date.

2. The Review Petition is filed by the Respondents in the Second Appeal. The Second Appeal is filed by the original Defendants challenging the decree for possession passed in favour of the Review Petitioners. The Second Appeal has been admitted for final hearing. The review is sought of the order dated 13th August 2004 passed in Civil Application No.821 of 2003. By the said order, stay was granted in favour of the Appellants in the Second Appeal subject to deposit of Rs.200/- per month in the trial Court from September 2004 on or before 10th day of every calender month. In the Review Petition, the Advocate for the Applicant has relied upon the order dated 8th August 2002 passed by the learned Additional District Judge on the Application for stay

filed by the Appellants in the Second Appeal before the District Court in the First Appeal filed by them. By order dated 8th August 2002 stay was granted subject to the Appellants depositing a sum of Rs.850/- per month on or before 10th day of every calender month. The said order was passed on the application at Exh.4. An Application was made at Exh.22 by the Review Petitioners herein before the 1st Appellate court for vacating the order passed below application Exh.4. On the said Application, the Appellants in the 2nd Appeal recorded their say that they were ready and willing to pay the amount as per the order dated 8th August 2002 passed on the application at Exh.4. These two orders were not brought to my notice when I passed order dated 13th August 2004.

3. The Advocate appearing for the Appellants in the Second Appeal has opposed the Application by contending that there is no ground for review. He has relied upon a decision of the Apex Court in the case of Haridas Das v/s. Usha Rani Banik and others reported in 2006 (4) Mah.L.J. page 14.

4. I have considered the submissions. It is obvious that the aforesaid orders were not brought to my notice when the order dated 13th August 2004 was passed by me. Both the Courts below have passed a decree for possession against the Appellants. The said order dated 13th August 2004 was passed without noticing the

aforesaid two orders and without considering the effect of the said orders. The decree passed by the trial Court against the Appellants was stayed by the 1st Appellate Court subject to the Appellants depositing Rs.850/- per month. After having lost in the First Appeal before the District Court, the stay cannot be granted subject to condition of deposit of an amount lesser than that amount. Hence a case for review is made out. Accordingly order dated 13th August 2004 needs to be modified and as a condition for grant of stay, a sum of Rs.850/- will have to be deposited isntead of Rs.250/- per month.

5. In view of the above, the following order is passed:

i) The order dated 13th August 2004 passed in Civil Application No.821 of 2003 is modified to the following effect:

. "Wherever reference is there to payment of Rs.200/- per month, the same shall be read as Rs.850/- per month."

ii) Time of six months from today is granted to the Appellants in the Second Appeal to pay difference upto 31st July 2006. From August 2006 the Appellants will start paying the sum of Rs.850/- per month in terms of the order.

iii) There will be no order as to costs.

Judge.